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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

96 WYTHE ACQUISITION, LLC,

Debtor,

STEPHEN S. GRAY, Not Individually But Solely In His
Capacity as Chapter 11 Trustee of the Estate of 96 Wythe
Acquisition, LLC,

Plaintiff,

v.

THE WILLIAMSBURG HOTEL BK, LLC, TOBY
MOSKOVITS, MICHAEL LICHTENSTEIN and
HERITAGE EQUITY PARTNERS,

Defendants.

Chapter 11

Case No. 21-22108 (SHL)

(Jointly Administered)

Adv. Pro. No. 22-07048 (SHL)

USDC Case No. 23-cv-00498
(KMK)(AEK)

**DEFENDANTS' OBJECTION TO PLAINTIFF'S SUR-REPLY [DKT. NO. 5] TO
DEFENDANTS' CROSS-MOTION FOR WITHDRAWAL OF THE REFERENCE**

TABLE OF AUTHORITIES

Cases

<i>Advanced Analytics, Inc. v. Citigroup Glob. Mkts. Inc.</i> , No. 04-CV-3531-LTS-SLC, 2022 U.S. Dist. LEXIS 120186, at *11 (S.D.N.Y. July 7, 2022).....	2
<i>Farmer v. Cnty. of Westchester</i> , No. 18-CV-2691-NSR, 2021 U.S. Dist. LEXIS 175597, 2021 WL 4199944, at *5 (S.D.N.Y. Sept. 15, 2021)	2
<i>Intellivision v. Microsoft Corp.</i> , 784 F. Supp. 2d 356, 366 n.4 (S.D.N.Y. 2011).....	2

TO THE HONORABLE KENNETH M. KARAS, UNITED STATES DISTRICT JUDGE:

Plaintiff's recent filing, titled "CHAPTER 11 TRUSTEE'S REPLY IN SUPPORT OF HIS OBJECTION TO DEFENDANTS' CROSS-MOTION TO WITHDRAW THE REFERENCE" [Dkt. No. 5] ("Sur-reply"), Plaintiff's second "Opposition," should not be considered as it is an unauthorized sur-reply, filed without permission and with no valid reason.

A surreply, or sur-reply, is an additional reply to a motion filed after the motion has already been fully briefed. USLegal.com, <http://definitions.uslegal.com/s/sur-reply>. The Local Rules provide for a motion, an opposition, and a reply. Neither the Local Rules nor the Federal Rules provide the right to a sur-reply. Local Civil Rule 6.1.

By Plaintiff's Sur-reply, filed on February 10, 2023 [Dkt. 5], Plaintiff merely seeks to bolster its arguments made in its first Objection to Defendants' Cross-Motion [Dkt No. 3]. Respectfully, the Court, accordingly, should strike Plaintiff's Sur-reply from the record.

Plaintiff's motion for summary judgment [Adv. Pro. No. 22-07048, Dkt. No. 10] and Defendants' Cross-motion for withdrawal of the reference [Dkt. No. 1], originally filed as Adv. Pro. No. 22-07048, Dkt. No. 16, was fully briefed and submitted on the record on February 2, 2023, when Defendants filed a reply to Plaintiff's opposition [Dkt. No. 3] ("Plaintiff's Opposition") to Defendants' Cross-motion for Withdrawal of Reference [Adv. Pro. No. 22-07048 Dkt. Nos. 30, 31] ("Reply to Cross-Motion") [now re-filed in this Court as Dkt. No. 6]. Plaintiff then improperly filed its Sur-reply on February 10, 2023 [Dkt. 5], after the motion was fully briefed, without leave of court.

Since Plaintiff's Sur-reply [Dkt. No. 5] seeks to bolster the arguments made in Plaintiff's original opposition to Defendant's Cross-Motion [Dkt. No. 3], the Court should disregard it as an unauthorized surreply. *Advanced Analytics, Inc. v. Citigroup Glob. Mkts. Inc.*, No. 04-CV-3531-

LTS-SLC, 2022 U.S. Dist. LEXIS 120186, at *11 (S.D.N.Y. July 7, 2022) (to the extent surreply rejected seeks to bolster arguments previously made surreply disregarded as an unauthorized surreply), citing *Farmer v. Cnty. of Westchester*, No. 18-CV-2691-NSR, 2021 U.S. Dist. LEXIS 175597, 2021 WL 4199944, at *5 (S.D.N.Y. Sept. 15, 2021) (“The Court does not consider Plaintiff’s unauthorized sur-reply considering his failure to first seek leave to file such a sur-reply.”); *Intellivision v. Microsoft Corp.*, 784 F. Supp. 2d 356, 366 n.4 (S.D.N.Y. 2011) (“the Court need not consider many of these untimely, multiplicative and unauthorized filings”) aff’d, 484 F. App’x 616 (2d Cir. 2012).

The Court neither requested a sur-reply nor granted a request on the behalf of Plaintiff to file a sur-reply. Plaintiff has not shown good cause for the Court to allow a sur-reply. Plaintiff’s Sur-reply should therefore be stricken from the record as improperly filed.

WHEREFORE, Defendants, The Williamsburg Hotel BK, LLC, Toby Moskovits, Michael Lichtenstein respectfully ask the Court disregard Plaintiffs’ Sur-reply.

Dated: New York, New York
February 13, 2023

Respectfully submitted,

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